

FEB 16 2006

05-52

MB Docket No. 05-52
RM-10300

Released: February 15, 2006

1. The Video Division has before it a *Notice of Proposed Rule Making*¹ issued in response to a petition for rule making filed by Viacom Television Stations Group of Pittsburgh, Inc. (formerly Paramount Television Stations Group of Pittsburgh, Inc.) (“Viacom”), requesting the substitution of DTV channel 49 for station WNPA-TV’s assigned DTV channel 30 at Johnstown and the reallotment of DTV channel 49 from Johnstown to Jeannette, Pennsylvania. Viacom filed comments reaffirming its intention in applying for DTV channel 49, if re-allotted to Jeannette. Larry L. Schrecongost, licensee of Class A television station WLLS, Indiana, Pennsylvania, filed comments in opposition to Viacom’s proposal. Schrecongost and Viacom filed reply comments. For the reasons discussed below, we will grant Viacom’s proposal.

2. The *Report and Order* in MM Docket No. 97-96, (*Johnstown and Jeannette, Pennsylvania*), 12 FCC Rcd 10300 (1997) changed the community of license for station WNPA-TV from Johnstown to Jeannette, Pennsylvania and re-allotted Channel 19+ from Johnstown to Jeannette as the community's first local television broadcast service. The *Report and Order* was adopted pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² However, in that action the paired digital channel that was assigned as a part of the WNPA-TV's license was inadvertently omitted from the Order. As a result, station WNPA-TV's analog channel (19) was re-allotted to Jeannette, and its digital channel (30) remained at Johnstown, Pennsylvania. In 1999, Viacom filed a petition for rulemaking requesting the substitution of DTV channel 49 in lieu of DTV channel 30 and the reallocation of DTV channel 49 to Jeannette, Pennsylvania, first to correct the paired DTV channel assignment to the wrong community, and second to eliminate the potential for harmful interference to WWCP-DT, DTV channel 29 at Johnstown.

² See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

DISCUSSION

3. Schrecongost argues that the proposal to allot DTV channel 49 to Jeannette should be rejected as being contrary to the Community Broadcasters Protection Act of 1999 ("CBPA")³ as enacted by Congress. Schrecongost states that the proposed DTV channel 49 facility at Jeannette would completely encompass the coverage area of WLLS-CA resulting in all of the viewers of WLLS-CA losing their local television service. Schrecongost also questions the acceptance of Viacom's petition for rule making arguing that the Commission stated in MM Docket No. 00-10⁴, that Class A stations were only required to protect pending applications for a new DTV station that were on file as of November 29, 1999. Schrecongost notes that while the Commission did provide for some flexibility for existing broadcasters to change their DTV channels to correct unforeseen technical problems, that situation did not apply in changing WNPA's community of license since the adoption of the change of community proposal was premised on the fact that there would be no change in WNPA's transmitter site.

4. We will deny Schrecongost's objection and approve Viacom's proposal. It is unquestionable that station WNPA-TV's community of license was changed from Johnstown to Jeannette, Pennsylvania, through an appropriate rule making proceeding in 1997.⁵ That proceeding is final and is not subject to review herein. It is also undisputed that in changing the community of license of station WNPA-TV from Johnstown to Jeannette, Pennsylvania, the digital table of allotments was not amended to reflect the community of license change. Since the WNPA-TV license is composed of paired analog and digital channels, this oversight was erroneous and should have been corrected by a subsequent order. Viacom's petition does not constitute a request for a new digital allotment at Jeannette, as Schrecongost alleges, but rather represents a request to correct the Commission's administrative error in not assigning WNPA-TV's paired digital channel to Jeannette when the Commission changed the station's community of license. Our action here corrects that oversight. The only question for review in this proceeding is whether WLLS-CA is entitled to protection from the operations of WNPA-DT. We conclude that WLLS-CA is not so entitled.

5. By Schrecongost's own admission, the Commission's Report and Order in the Establishment of a Class Service, does provide flexibility to licensees with initial paired channels to resolved technical problems or maximize their digital operations.⁶ Thus, such proposals by initial digital licensees are not required to protect Class A facilities. WNPA-TV is currently assigned digital channel 30 at Johnstown. Operation on channel 30 in Jeannette (its appropriate community of license) would cause impermissible interference to station WWCP-DT, channel 29 in Johnstown. WNPA-TV's proposed Jeannette site on channel 49 eliminates this interference and enables WNPA-DT to provide maximized service to Jeannette, while enabling station WWCP-DT, channel 29 to continue to provide interference-free digital service to Johnstown. Although WLLS-CA will be displaced on channel 49, it need not go off the air. Viacom has identified at least two available channels on which WWLS-CA may continue broadcasting.

³ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), *codified at* 47 U.S.C. § 336(f).

⁴ See *Report and Order, In the Matter of Establishment of a Class A Service ("Establishment of a Class A Service")*, 15 FCC Rcd 6355 (2000).

⁵ See *Johnstown and Jeannette, Pennsylvania*.

⁶ *Establishment of a Class A Service*, Id.

6. DTV channel 49 can be allotted to Jeannette in compliance with the principle community coverage requirement of Section 73.625(a) at coordinates 40-23-34 N. and 79-46-54 W. Since the community of Jeannette is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. In addition, we find that this channel is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for Station WNPA-DT with the following specifications:

<u>State & City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
PA Jeannette	49	437	301	2851

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 3, 2006, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Amended</u>
Johnstown, Pennsylvania	29, 30, 34	29, 34
Jeannette, Pennsylvania	---	49

8. IT IS FURTHER ORDERED, That within 45 days of the effective date of this *Order*, Viacom Television Stations Group of Pittsburgh, Inc. shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 49 at Jeannette, Pennsylvania, in lieu of DTV Channel 30 at Johnstown, Pennsylvania, for station WNPA-DT.

9. Pursuant to Section 1.1104(1)(k) of the Commission's Rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing the application to implement the change of community of license and/or upgrade. As a result of this proceeding, Viacom Television Stations Group of Pittsburgh, Inc. is required to submit a rule making fee in addition to the fee required for the application to effect the change in its community of license.

10. The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. Section 801(a)(1)(A).

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Pam Blumenthal, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau